UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/21
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

GE.99-10524 (E)

Violations of civil and political rights in Armenia

1. New judicial and legislative reforms have been taking place for the past three years in Armenia aimed at improving the situation in the administration of justice. The International Federation of Human Rights (FIDH) and its member organization in Armenia, Avangard Humanitarian Research Center, are deeply concerned about problems and omissions which these reforms have resulted in and which put into question the whole process of reforms intended to make necessary improvements in the administration of justice in Armenia. The main issues of concern are the following:

(a) Arbitrary and illegal detention and inhuman and cruel treatment of detainees are still a matter unchallenged by the Armenian authorities, since the law enforcement institutions are protected by total impunity;

(b) Today, independence of judiciary is mere rhetoric in Armenia. To improve the situation, we urge that the Armenian authorities take immediate measures to amend the relevant provisions of the Constitution to provide real guarantees for the independence of judiciary;

(c) The role of the Constitutional Court as a guarantor against any violation of the norms and principles of the Supreme Law of the Republic of Armenia, particularly those related to the administration of justice, is undermined by the 1995 Constitution. The Constitution needs to be amended to provide the necessary means for the Constitutional Court to ensure that the Supreme Law is not violated.

Arbitrary and illegal detention, torture and ill-treatment, and impunity

2. The FIDH and Avangard are concerned about persistent cases of torture and deliberate ill-treatment perpetrated by law enforcement officials, arbitrary and illegal arrests or detention and other violations of fair trial procedure in Armenia. They call upon the Armenian authorities to take measures to bring to justice those responsible for such violations. They urge the Armenian Government to take serious measures to ensure that the administration of justice in Armenia conforms with the international standards.

3. Arbitrary and illegal arrests and detention are also common practices of law enforcement institutions in Armenia. The military personnel at conscription offices illegally detain as a hostage family members of those who refuse to present themselves for military service. In April 1995, a dozen religious groups were attacked by paramilitary troops. Pastors and group members were beaten and kidnapped. Some of them were illegally detained for several weeks by the military police. The Armenian authorities have taken no steps to arrest the perpetrators. As a recent illustration of the judicial practice and due process violations, the case of Mr. Arman Dangoyantz can be mentioned. He was arrested in December 1996. For 17 days he was kept incommunicado. During that period he was not informed of the nature of the charges against him. He was tortured. For four months his arrest was without lawful grounds as prescribed by the Armenian criminal procedure legislation. His house was illegally searched. Before being arrested his telephone was illegally tapped. For 17 days he was denied access to a defence lawyer.

4. This criminal case was tried in the Erebouni District Court of Yerevan. The statements of the defendant and his lawyer on the due process violations were ignored. The defence lawyer himself, on 5 January 1999, was denied the right to conclude his speech in the court.

5. The 1995 Constitution of the Republic of Armenia prohibits torture and cruel treatment and provides that evidence obtained through violation of legal proceedings has no legal force. Under Armenian law it is a criminal offence for law enforcement officials to take a testimony using threat and violence.

6. The United Nations Committee against Torture in its concluding observations adopted on 30 April 1996 and the Special Rapporteur against torture in his last report to the Commission on Human Rights expressed their concern about cases of ill-treatment perpetrated by law enforcement officials. According to Avangard's own observations and to reports from other NGOs, such violations by law enforcement officials continue to take place either immediately after detention or while awaiting trial. The Armenian authorities have been reluctant to take measures to bring to justice those responsible for violations. For example, during the trials of "Dro", "31+" and "September, 1996" many defendants made statements in the courts that they had been beaten and ill-treated by law enforcement officials to obtain information or a confession. Despite the fact that many of the defendants were released after the resignation of President Levon Ter-Petrossian, the Armenian authorities have taken no steps to conduct a full judicial investigation, to bring to justice those responsible for torture and ill-treatment during pre-trial detention and to provide full reparation to victims.

Independence of the judiciary

7. As a State party to the International Covenant on Civil and Political Rights (ICCPR), Armenia has an obligation not only to adopt legislation to give effect to the rights protected by the treaty but also to ensure an independent judiciary as an effective remedy for those who claim their rights have been violated, in conformity with article 2 (3) and 14 of the ICCPR.

8. The 1995 Armenian Constitution declares the separation of legislative, executive and judicial powers and independence of judiciary. However, it does not appear to be designed to insulate the courts from political pressure from the executive branch. According to article 55 (11), the President of the Republic of Armenia appoints the presidents and judges of the Court of Appeals and its chambers, the review court, the court of first instance and other courts. The President can terminate the power of any judge and approve the arrest and subjecting of a judge to administrative or criminal liability by judicial procedure. The Justice Council makes its recommendation on the appointment and removal of judges to the President. However, the Justice Council, which acts as a supervisory and disciplinary body of the judiciary, is subject to the President's control. The President heads the Justice Council and appoints its 14 members. The Minister of Justice and the Prosecutor General, who are appointed and removed by the President upon recommendation of the Prime Minister, are Vice-Presidents of the Justice Council. Thus, the President has overwhelming influence in appointing and dismissing judges at all levels. The Law on the Status of Judges, aimed at ensuring the independence of judges in the administration of justice,

continues the same traditions as provided in the Constitution. In addition, it creates the independence of judges of low-level courts from high-level courts.

9. Armenian legislation does not provide a guarantee against government influence on defence lawyers. The Law on the Activity of Defence Lawyers provides that a lawyer should pass a State examination before the Commission on State Qualification in order to get permission to work as a defence lawyer. The majority of the members of that Commission are representatives of the Government. Thus, the judiciary established by the 1995 Constitution is not independent.

Reform of the Constitutional Court

10. The Constitutional Court, created on 6 December 1995, is entitled by the Constitution to rule on the constitutionality of the laws, resolutions of the Government and the National Assembly and presidential decrees and orders. Prior to the ratification of international treaties and agreements, this Court should also decide whether obligations under the treaties are in conformity with the Constitution. According to article 101 of the Constitution, this Court discusses the constitutionality of laws only if an application is submitted by the President or one third of all the National Assembly deputies. Neither common citizens nor national courts can bring cases to the Constitutional Court questioning the constitutionality of laws or a national court's decision. This creates two problems. First, it results in the isolation of the Constitutional Court from national courts. Since neither common citizens nor defence lawyers can appeal to the Constitutional Court questioning the constitutionality of a national court's decision, the Constitutional Court has no means to oversee whether the decisions of national courts are in conformity with the Constitution. Secondly, common citizens have no means to challenge those laws, resolutions, decrees and orders that they believe violate their constitutional rights.

11. Considering the fact that the main function of the Constitutional Court is to rule on the constitutionality of laws, we consider that its members should all be lawyers.

12. We cannot also ignore the fact that today one member of the Constitutional Court himself violates the provisions of the Constitution. To guarantee an impartial and independent Constitutional Court, article 98 of the Constitution requires that judges and members of the Constitutional Court do not hold any other public office and not be engaged in any political activity. However, the Chairman of the Constitutional Court has been nominated by presidential decree as a member of the National Security Council of Armenia. This is an advisory body to the President, responsible for all the important political decisions taken by the President. This situation, in our view, violates the above-mentioned provision of the Constitution.

13. Today, the outcome of the current reforms depends substantially on the necessary changes in the present legislation to ensure the independence and functioning of the Constitutional Court as a guarantor that the Constitution is respected. We call upon the Armenian authorities to take immediate measures to improve the situation.

14. To conclude, the FIDH and Avangard request from the Commission on Human Rights to call upon the Armenian authorities to:

(a) Implement the recommendations of the Committee against Torture and of the Human Rights Committee;

(b) Invite all the thematic special procedures of the Commission on Human Rights to visit Armenia.